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Subject.— Opinions under the Bombay Non-Urban Labour Housing Sanitation and Provision Shops Act, 1944

(P 3/E)

O.N.G. Labour Housing
File No Sanitation and Provision 1/45

Gen. 194 e.

579-A

CONTENTS.

Legal Department File No. C.H.U.Labour Housing Sanitation and Provision/45.

Sr.No.	R.L. / O.No.	Subject.	Pages.
		Opinions under the Bombay Agn.-Urban Labour Housing Sanitation and Provision Shops Act, 1944.	
1	9675 27-12-1945	Whether the Act applies to the Military Authorities who employ Civil labour for military works.	1-4.

Office of the R.L.A.

The question referred to the R.L.A. for opinion is whether the Bombay Non-Urban Labour Housing Sanitation & Provision Shops Act, 1944, applies to the Miliraty Authorities who employ civil labour for military works.

2. Since the Central Government is the employer of labour for military works the reply to the question depends upon whether or not the Bombay Non-Urban Labour Housing. Sanitation and Provision Shops Act, 1944, binds the Crown.

It is a well established rule of English law that "the Crown is not bound by a statue unless named init. It Has been said that the law is prima ficie presumed to be made forsubjects only. At all events the Crown is not reached except by express words or by necessary implication in any case where it would be ousted of an existing prerogative or interest. It is presumed that the Legislature does not intend to deprive the Crown of any prerogative right or property unless it expresses its intention to do so in explicit terms or makes the inference irresistible. Where therefore the language of the statue is general and in its wide and natural sense would divest or take away any prergative or right from the Crowb, it is construed so as the exclude that effect. It is said that the rule does not apply when the Act is made for the public good, the advancement of religion and justice, the prevention of fraud or the suppression of injury and wrong; 'for religion, justice and truth are the sure supporters of t e Crowns and Diadems of kings.' But it is probably more accurate to say that the Crown is not exclude from the operation of a statue where neither its prerogative rights not property are in question" (See Maxwell pp.122,124). A statue may contain previsions by which the Crown never would be bound unless that were clearly expressed such, for instance as the provisions of a taxing statue, or certain enactments with penal clauses adjested (see Edinburgh Magistrates v. Lord Advocate, 1912. S.C. 1985). Generally speaking when the words

used in an Act of Parliament and "person or persons" the Crown is not bound (see R.V. Duffy, 1849, 1 Ir Jur 81).

The rule of construction according to which the Crown is not affected by a statute unless expressly named in it applies to India; and the Viceroy and Governor General as representing the Crown enjoys a like exemption (see Secretary of State for India v. Mathurabai 14 Bom. 213 followed in Hiranand Kirpalani v. Secretary of State 36 B.L.R. 820). The Crown is not expressly named in the Bombay Non-Urban Labour Housing Sanitation and Provision Shops Act, 1944. To determine whether the Crown is bound by necessary implication it is necessary to examine the provisions and the nature of the Act.

3. The object of the Bombay Non-Urban Labour Housing, Sanitation & Provision Shops Act, 1944, as stated in paragraph 6 of the Statement appended thereto appears to be to control labour housing and sanitation in areas outside municipal and cantonment limits and to make orders which will ensure that employers of labour provide reasonable sanitary conditions and open provision shops for their labour in such area . If this is read in conjunction with paragraph 3 it appears that the intention was to control these Employer Contractors who collect large bodies of labour for executing work in connection with the war. Section 2(3) defines "employer" as meaning a person employing whether by daily or monthly wages on piece work or otherwise at any one time not less than such number of labourers as the provincial Government may from time to time fix in the official Gazette on work other than agricultural work. Under section 4(1) the power to make regulations in respect of any area for any employer vests in the Provincial Government. By expressly referring to the Provincial Government in these provisions and reserving thereto the power to make regulations in respect of any employer it appears that the Legislature intended to exclude the Crown by implication; for if the Crown were intended to be included in the definition of "employer" the power could not have been left with Government to make regulations in respect of any employer, since that would mean making regulations for

itself. The use of the word "person" in the definition of "employer" lends to support and inference.

The Controlling officer appointed by the Provincial Govern ment is empowered to enforce the provisions of the Bombay Non-Urban Labour Housing, Sanitation & Provisions Shops Act; and sections 3(2), 7 and 11(2) prescribe the penalty for the breach of the provisions of the Act and the orders made thereunder. Section 6 empowers the controlling officer to execute the work and recover the cost from the defaulting employer. It can hardly be contended that this remedy is applicable to the Crown (see the observations of Rangnekar J/ in 36 B.L.R. 820 at p. 826). In the circumstance although the Bombay Non-Urban Labour Housing, sanitation and Provision Shops Act, 1944, is in a way intended for the public good it appears that the Crown is not bound by it by necessary implication since it trenches upon the prerogatives of the Crown.

Sd/- P.N.MOOS.
27/12/45.

Remembrancer of Legal Affairs.

U.R. to G.D., No. 9675 dated 27th December 1945.

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